

REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing amendment and the following remarks.

Claims 8-19 were pending in this application. In this Amendment, Applicant has amended claims 8-10 and 19, added new claims 20-23, and has not canceled any claims. Accordingly, claims 8-23 will be pending after entry of this Amendment.

In the Advisory Action mailed April 30, 2009, the Examiner maintained the rejections of the pending claims set forth in the January 9, 2009 final Office Action, rejecting claims 8-19 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,359,265 to Thorne, Jr. et al. ("Thorne") and U.S. Patent No. 5,356,420 to Czernecki et al. ("Czernecki"). To the extent that rejection might still be applied to the currently pending claims, Applicant respectfully traverses the rejection.

Claims 8-19

Applicant has amended independent claim 8 to clarify a feature of the present invention relating to the relative positions of the at least one return spring, the at least one side jut, and the driving spring. Specifically, amended claim 8 recites that those structures of the claimed puncturing device are disposed in series along the longitudinal axis before, during, and after use of the puncturing device, wherein the longitudinal axis is defined by the puncturing needle. This amendment therefore clarifies how the at least one side jut is positioned *between* the at least one return spring and the second end of the driving spring, and obviates the Examiner's broad reading of "between" in terms of axial placement. (Advisory Action at page 2, lines 1-4.)

Support for the amendment can be found, for example, at page 4, lines 12-17 of the present specification and in Figures 1-4.

Although Thorne may show bars 354, 356 of hub 352 *radially* between the blade shield parts 420, 430 and the driving spring 350 at some points of operation, Thorne does not teach that those parts are disposed in series along the longitudinal axis before, during, and after use of the puncturing device.

Applicant therefore respectfully submits that amended claim 8 is patentable over the prior art. In addition, Applicant respectfully submits that dependent claims 9-19 are also patentable due at least to their dependence on an allowable base claim and for the additional features recited therein.

Regarding those additional features, Applicant specifically notes claim 9, which recites the above-described relative positions for an embodiment comprising two return springs and two side juts. In addition, claim 10 has been amended to more specifically recite the construction and position of the return springs, support for which can be found, for example, at page 3, line 7 and page 4, lines 7-12 of the present specification and in Figures 1-4. Thorne's blade shield parts 420, 430, which are shaped as clamshells (*see, e.g.*, column 9, lines 34-47), fail to teach or suggest the structure recited in amended claim 10.

Regarding claim 13, in the Advisory Action, the Examiner stated that "'separate' is taken to mean 'to space apart'" and that in Figure 19 of Thorne, the "second end of the driving spring is more spaced apart from the needles after deployment than before deployment." Applicant disagrees with this interpretation of the recited claim language and the teachings of Thorne.

Claim 13 recites that the pusher “separates from the puncturing needle,” not simply “separate” as the Examiner stated. In other words, as recited, the pusher contacts the puncturing needle during operation, and then separates from the puncturing needle after use. Claim 13 does not recite a degree of separation (as suggested by the Examiner’s statement of “more spaced apart”), but rather that the pusher contacts first and then separates from the puncturing needle. In other words, in separating from the puncturing needle, the pusher discontinues contact with the puncturing needle.

The Examiner’s interpretation of Thorne is also misplaced. Nowhere in Thorne does the driving spring 350 separate from the hub 352 and the needle 90’. Those structures are always continuous, as shown in Figures 17-20, for example. In addition, even under the Examiner’s incorrect claim language interpretation, the puncturing needle 90’ of Thorne is always spaced apart the same distance from the driving spring 350, since the driving spring 350 is what flexes and changes distance.

Moreover, contrary to the Examiner’s assertions, it would not be obvious to fashion the separate pusher and puncturing needle from the integral construction of Thorne because of the surprising results relating to more cost-efficient manufacture (*e.g.*, manufacturing the puncturing needle 5 separate from the push button 3) and to the free movement of the puncturing needle unencumbered by the driving spring (*e.g.*, the driving spring 11 does not pull back on the puncturing needle 5) to provide a swift and safe puncture of a patient’s skin. (*See, e.g.*, page 3, lines 8-9 of the present specification.)

Regarding claim 17, Applicant also specifically traverses the Examiner's rejection of that claim based on Thorne, in which the Examiner stated (in the Advisory Action) that the feature of the return spring acting against the side jut is met by Thorne's spring 420 exerting force against the hub 352 on which side juts 354 are disposed. The Examiner's reasoning fails to account for the additional related limitation in the last paragraph of claim 17 that recites that the at least one return spring applies a second force to the at least one side jut *after the lancet extends outside the housing* and in a direction generally opposite to the first force *to pull the lancet of the puncturing needle inside the housing*. In other words, the return spring acts against the side jut after the lancet extends outside the housing to pull the lancet back inside the housing. In this regard, the Examiner dismissed the fact that the driving spring of Thorne returns the blade to inside the housing. However, that fact shows that the driving spring 350 of Thorne – not the blade shield parts 420, 430 – retracts blade 90' in housing 300. Indeed, as shown in Figures 19 and 20 of Thorne, after the blade shield parts 420, 430 separate and release the hub 352, the blade shield parts 420, 430 remain apart and do not exert any force on the hub 352 that would pull the blade 90' back into the housing 300. If anything, the blade shield parts 420, 430 would actually exert a force opposite to the recoiling of the driving spring 350, since the hub 350 extends beyond the ends of the open blade shield parts 420, 430 and may have to push against the blade shield parts 420, 430 as it moves in a direction back toward the inside of the housing 300, as shown in Figure 20.

Applicant therefore respectfully submits that claim 17 is patentable for that additional feature. Applicant has also added new claim 23 reciting a similar feature, and respectfully

submits that new claim 23 is also patentable for the above reasons. Support for new claim 23 can be found, for example, at page 5, lines 4-7 of the present specification and in Figures 3 and 4.

Regarding claim 19, Applicant has amended that claim to clarify that the arms are integral to the push button before, during, and after use of the puncturing device, support for which can be found, for example, in Figures 1-4 of the present application. In contrast, Thorne at best teaches arms integral with the push button *only after* use of the puncturing device.

New Claims

Applicant has added new claim 20 to recite a further feature relating to a detent defined by each of the arms of the push button, to which the each of the at least one return spring is connected. Support for new claim 20 can be found, for example, at page 4, lines 6-7 of the present specification and in Figures 1-4.

New claim 21 recites the position of the at least one side jut as proximate to the first end of the puncturing needle and proximate to the second end of the driving spring, support for which can be found, for example, in Figures 1-4 of the present application.

New claim 22 recites the positions of the at least one side jut and the breakable wings, support for which can be found, for example, in Figures 1-4 of the present application.

As discussed above, new claim 23 recites that the at least one return spring acts against the at least one side jut in a direction generally opposite to the driving direction after a lancet of the puncturing needle extends outside the housing, to pull the lancet in a direction opposite the driving direction along the longitudinal axis and back inside the housing. Support for new claim

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23 can be found, for example, at page 5, lines 4-7 of the present specification and in Figures 3 and 4.

In view of the foregoing all of the claims in this case are believed to be in condition for allowance. Should the Examiner have any questions or determine that any further action is desirable to place this application in even better condition for issue, the Examiner is encouraged to telephone Applicant's undersigned representative at the number listed below.

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